

Application No.: 10/529,612
Docket No.: BA9313USPCT

Page 10

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REMARKS

Claims 1-15 are pending in the application, and Claims 13-15 have been withdrawn from consideration and are canceled herein. Claims 1-12 stand rejected. Claims 1, 3, 4, 6, 7, 9, 11 and 12 have been amended. Applicants respectfully request reconsideration in view of the amendments and remarks herein.

Applicants note the remarks of the Examiner with respect to proper Information Disclosure Statements and bringing to the attention of the examiner information within their knowledge as to other copending United States applications which are "material to patentability" of the application in question. Applicants further note the attachment to the present Office Action of the PTO/SB/08A Form which had been attached to Applicants' Supplemental Information Disclosure mailed on December 20, 2006 and which has now been initialed by the Examiner indicating consideration of the listed references.

Applicants bring to the Examiner's attention the Information Disclosure Statement transmitted to the Office on September 9, 2005. Applicants note that a copy is available in Public PAIRS and asks that the Examiner indicate consideration of the references listed thereon. These references were listed in the corresponding PCT Search Report and the Examiner is directed to the fact that the overwhelming majority of the references are owned by the same company as the present application. For the convenience of the Examiner, US patents and applications corresponding to the PCT publications listed on this previous Information Disclosure Statement are included in a Second Supplemental Information Disclosure Statement that accompanies this AMENDMENT AND RESPONSE.

The Examiner stated that the specification had not been checked to the extent necessary to determine the presence of all possible minor errors and requested the Applicants' cooperation in correcting any errors of which they may be aware.

Applicants have presented amendments to the specification herein to correct minor errors of which they are aware.

Claims 1-12 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the compounds disclosed in U.S. Patent 6,965,032 (hereinafter referred to as "the '032 patent"). Applicants respectfully traverse this rejection.

The Examiner stated that the '032 patent teaches substituted dihydro 3-halo-1H-pyrazole-5-carboxylates and that although the claims in the '032 patent are not identical they are not patentably distinct from the claims in the present application. Attention was directed to formula III in columns 2 and 26 of the '032 patent.

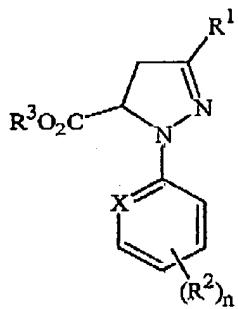
As outlined in the Office Action a double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined claim is not patentably distinct

Application No.: 10/529,612
 Docket No.: BA9313USPCT

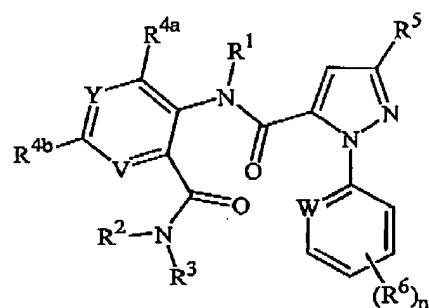
Page 11

from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference(s).

A comparison between the simple dihydropyrazole carboxylate esters of Formula I in Claim 1 of the '032 patent and the insecticidal pyrazole anthranilic diamides of Formula I in Claim 1 of the present application reveals that the claimed structures are completely different. Applicants point out that the dihydropyrazole ring of the '032 patent is not present in the present application; Formula I of the present application possesses a fully aromatized pyrazole ring. In addition R³ of the '032 patent can only be H or C₁-C₄ alkyl which is vastly different from the corresponding multiply substituted phenyl, pyridinyl or pyrimidinyl carboxamide structure in the present application. Further, the claimed compounds of the '032 patent are only useful in preparing the compounds of Formula III of the '032 patent.



Formula I, Claim 1
 US 6,965,032



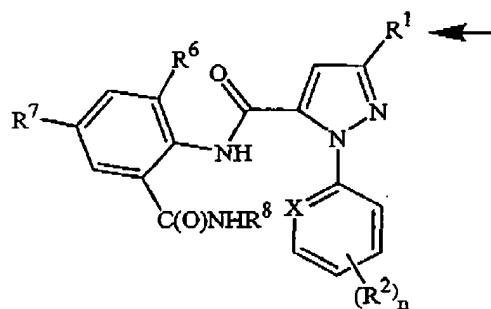
Present Formula I, Claim 1

The claimed compounds of cited Formula I versus the claimed compounds of present Formula I are therefore patentably distinct. Where the Office Action recites "Although the conflicting claims are not identical..." Applicants query if a double patenting rejection is proper.

The Examiner has particularly pointed out compounds of Formula III (columns 2 and 26) of the description from the '032 patent as a basis for obviousness-type double patenting. As shown below, the definition of R¹ in Formula III from the specification (and corresponding R¹ in Formula I from the claims) is halogen.

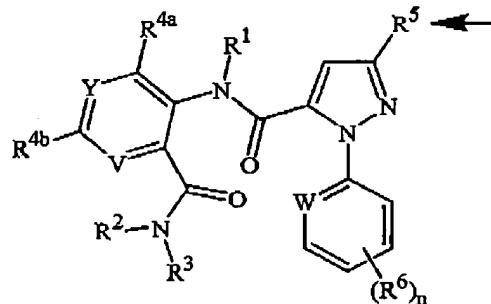
Application No.: 10/529,612
 Docket No.: BA9313USPCT

Page 12



Formula III
 column 2 and 26
 US 6,965,032

In the present application the definition of R⁵ in Formula I (Claim 1) is completely different.



Present Formula I

The definition of R⁵ is C₁-C₆ alkyl, C₂-C₆ alkenyl, C₂-C₆ alkynyl, C₃-C₆ cycloalkyl, C₄-C₇ alkylcycloalkyl, C₁-C₆ haloalkyl, C₂-C₆ haloalkenyl, C₂-C₆ haloalkynyl, C₃-C₆ halocycloalkyl, C₄-C₇ haloalkylcycloalkyl, each substituted with 1 to 2 substituents independently selected from R¹¹; or R⁵ is OR⁷, S(O)_pR⁷, NR⁸R⁹, OS(O)₂R¹⁰, NR⁹S(O)₂R¹⁰, C(S)NH₂, C₄-C₇ halocycloalkylalkyl, C₁-C₄ alkylaminothiocarbonyl or C₁-C₄ dialkylaminothiocarbonyl;

The definition of R⁵ in the present application does not include halogen.

Furthermore, the intermediates claimed and used in the '032 patent do not enable one skilled in the art to prepare a compound of Formula I of the present invention. For example, one skilled in the art recognizes that the '032 patent does not teach how to prepare compounds of Formula I where present R⁵ is propargyloxy (-OCH₂CCH, Index Table A, compound 8) or 2-chloropropenyloxy (-OCH₂C(Cl)=CH₂, Index Table A, compound 16).

In summary, the compounds claimed in the present application are patentably distinct over the compounds claimed in the '032 patent. In addition, the definition of R¹ in a compound of Formula III from the '032 patent is only halogen whereas the definition of corresponding R⁵ in a compound of Formula I from the present application does not include halogen. Finally, the compounds of the '032 patent do not enable one skilled in the art to

Application No.: 10/529,612
Docket No.: BA9313USPCT

Page 13

prepare compounds of the present invention. Therefore, Applicants respectfully request that the non-statutory obviousness-type double patenting rejection be withdrawn.

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After fully considering Applicants' RESPONSE TO RESTRICTION REQUIREMENT transmitted August 9, 2007, the Examiner stated that the Remarks therein were found persuasive regarding the inclusion compounds containing W = C or N. Applicants' gratefully acknowledge the Examiner's consideration and inclusion of these compounds within the scope of the present application.

MAY 05 2008

In view of the foregoing, allowance of the above-referenced application is respectfully requested.

Respectfully submitted,



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